

REMARKS

Claim 24 stands rejected under 35 USC 112, second paragraph as being indefinite. Specifically, claim 22 states that aliphatic polyester is part of the polyester carpet pile and claim 24 states that aliphatic polyester is part of the base cloth. The Examiner states that it is unclear whether the same aliphatic polyester is used for the base cloth and the carpet pile. Claim 24 has been amended to clarify that “an” aliphatic polyester is used for the base cloth. Accordingly, this aliphatic polyester can be the same as or different from the aliphatic polyester used for the carpet pile.

Claims 22-24 stand rejected as being indefinite for claiming the invention in terms of physical properties rather than the chemical or structural features that produce said properties. The Federal Circuit, as reflected in MPEP 2173.05(g), has made it clear that functional limitations are fine and should be considered like any other limitation in a claim. Specifically, MPEP 2173.05(g) states:

A functional limitation is an attempt to define something by what it does, rather than by what it is (e.g., as evidenced by its specific structure or specific ingredients). There is nothing inherently wrong with defining some part of an invention in functional terms. Functional language does not, in and of itself, render a claim improper. *In re Swinehart*, 439 F.2d 210, 169 USPQ 226 (CCPA 1971).

A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used. A functional limitation is often used in association with an element, ingredient, or step of a process to define a particular capability or purpose that is served by the recited element, ingredient or step.

Accordingly, as plainly stated in the MPEP, the current legal standard is that functional limitation can, and often are, used to further define a particular ingredient or step. Since applicants use these functional limitations to further define the claimed multifilament crimped yarn, this rejection should be withdrawn.

Claims 22-24 stand rejected under 35 USC 102(a) as being anticipated by JP 2002-180340 (hereinafter JP '340). Accompanying this amendment is a Petition to Correct Inventorship. The Petition deletes Daisuke YAHATA, Shinnichi NISHIHATA, Motokatsu NISHIMURA, Tatsuro MIZUKI, and Kenzo KUBO as inventors since their contribution is no longer being claimed. Accordingly, the remaining inventors on this application: Kazuya MATSUMURA, Takehiko MIYOSHI, and Masakatsu UMEDA, compose the same inventive entity as JP '340 (Please note that Takehiko Mistuyoshi listed in JP '340 refers to the same person as Takehiko Miyoshi, and Takehiko Miyoshi is the correct spelling of his name).

Since JP '340 and the instant application were invented by the same inventive entity, JP '340 is not an invention "by others" under 35 USC 102(a). Further, the filing date of the Japanese patent application is evidence of a date of the invention that is earlier than the date that this Japanese patent application published. Accordingly, JP '340 is no longer a valid prior art reference under 35 USC 102(a), and this rejection should be withdrawn.

Claim 22 stands rejected under 35 USC 102(a) as anticipated by or, in the alternative, under 35 USC 103(a) as obvious over JP 2002-10572 issued to Okawa (hereinafter Okawa). Claims 23 and 24 stand rejected under 35 USC 103(a) as being unpatentable over Okawa. These rejections are respectfully traversed.

As explained above, the Examiner rejected the claims as being anticipated by, and therefore fully described by JP '340. The present application now has the same inventive entity as JP '340. Accordingly, the filing of JP '340 proves a date of invention by this inventive entity as of the filing date of JP '340. According to 35 USC 102(a), to qualify as prior art, a foreign patent publication must publish "in this or a foreign country, before the invention thereof by the applicant for patent."

The filing date of JP '340 is December 18, 2000, which establishes a date of invention as of this date. Okawa did not publish until April 4, 2002, which is after the established date of invention of the instant invention. Accordingly, Okawa is not a valid prior art reference, and the rejection of claims 22-24 over Okawa should be withdrawn.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. **360842009710**.

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Respectfully submitted,

By 

Jonathan Bockman

Registration No.: 45,640
MORRISON & FOERSTER LLP
1650 Tysons Blvd, Suite 300
McLean, Virginia 22102
(703) 760-7769